

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs, September 1, 2009

**STATE OF TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES, v.
KATIE ANN WALSH, In the Matter of J.W.W. (d.o.b. 4-6-07), A Child Under
Eighteen years of Age**

**Direct Appeal from the Juvenile Court for Sullivan County
No. BCJ-13074 Hon. Paul R. Wohlford, Judge**

No. E2009-00519-COA-R3-PT - FILED NOVEMBER 13, 2009

In this action to terminate the parental rights of the defendant mother, the Trial Court determined, after hearing the evidence, that there was clear and convincing evidence that the mother had failed to substantially comply with the permanency plan, that the persistent conditions continued that had established the basis for removal of the child from the mother at the outset, as the mother had continued involvement in criminal activity. Further, that the mother had abandoned the child. On appeal, the mother waived the issue of whether the termination of her parental rights was in the child's best interest. On the issues raised on appeal by the mother, we affirm the findings and Judgment of the Trial Court.

Tenn. R. App. P.3 Appeal as of Right; Judgment of the Juvenile Court Affirmed.

HERSCHEL PICKENS FRANKS, P.J., delivered the opinion of the Court, in which CHARLES D. SUSANO, JR., J., and D. MICHAEL SWINEY, J., joined.

C. Brad Sproles, Kingsport, Tennessee, for appellant, Katie Ann Walsh.

Robert E. Cooper, Jr., Attorney General and Reporter, Michael E. Moore, Solicitor General, and Jill Z. Grim, Assistant Attorney General, Nashville, Tennessee, for appellee, the Tennessee Department of Children's Services.

OPINION

The Petition to Terminate Parental Rights of defendant to her child, J.W.W., was filed on June 6, 2008. Also named as defendants, were the named father, Michael Farrell and any Unknown Father. The petition recited the child was currently in the custody of petitioner and that the child had been adjudicated dependent and neglected on May 21, 2007 by the Juvenile Court after it issued a protective custody order placing the child in temporary state custody. The child has remained in foster care since the protective custody order was issued.

The child was born on April 6, 2007, and no father is listed on the birth certificate. The grounds for termination set forth were: abandonment for failure to visit, abandonment for failure to support, and abandonment for failure to provide a suitable home for the child. Also grounds set forth was the substantial noncompliance with the permanency plan, and persistent conditions, in that the conditions that led to removal still persisted.

The case was heard on January 23, 2009, and following trial the Judge entered a Final Decree of Guardianship in favor of DCS, and terminated the parental rights of Ms. Walsh, Michael Farrell and any Unknown Fathers. The Order also granted DCS the right to place J.W.W. for adoption.

The Trial Court found that DCS had shown by clear and convincing evidence that Ms. Walsh had failed to provide a suitable home for J.W.W. for a period of four months following removal pursuant to Tenn. Code Ann. § 36-1-113(g)(1) and § 36-1-102(A)(ii) and that DCS had provided reasonable efforts to assist Ms. Walsh to establish a suitable home but she had failed to do so. The Court found this failure was grounds for termination.

The Court also found by clear and convincing evidence that Ms. Walsh had failed to substantially comply with the permanency plan pursuant to Tenn. Code Ann. § 36-1-113(g)(2) and § 37-2-403(a)(2). The Court specifically found that the January 2, 2008 plan required Ms. Walsh to refrain from criminal activity and to remain in good standing on probation and that she had failed to do so in that she had continued to be involved in criminal activity, resulting in a violation of probation and her subsequent incarceration.

The Court further found by clear and convincing evidence that the parental rights of Ms. Walsh should be terminated on the ground of persistent conditions pursuant to Tenn. Code Ann. § 36-1-113(g)(3) because the child was removed from the mother as a result of the mother's untreated mental health needs. The Court stated that DCS made reasonable efforts to assist Ms. Walsh with these needs but that she refused to avail herself of any assistance and made no reasonable efforts to comply with mental health services. The Court rejected Ms. Walsh's testimony that she was unaware of any mental health recommendations and accepted the testimony that their recommendations were explained to her in great detail. The Court further observed that Ms. Walsh's continued involvement in criminal activity while her child was in state custody showed a lack of

concern for the well being of the child to the extent that continuation of the parent/child relationship would greatly diminish the child's chances of being placed in a safe, stable and permanent home.

The Court then addressed the child's best interests and stated that it was in the best interests of the child that all of the respondent's parental rights be terminated. The Court found that the respondent had not made any adjustment of circumstance, conduct or conditions to make it safe and in the child's best interest to be in the home of any of the respondents; that the respondents had failed to effect a lasting adjustment after reasonable efforts by DCS for such a time that lasting adjustment does not appear possible. The Court said that a change of environment and caretakers at this point would have a detrimental effect on the child's emotional and psychological well being as the child has been in the custody of the state since his birth and he has developed a stable emotional, psychological and medical environment with the foster parents who wish to adopt the child, and that he had bonded with the foster parents; that Ms. Walsh's mental and emotional status would be detrimental to the child and would prevent her from providing a safe and stable home for the child. The court noted that Ms. Walsh had other children but had not reared any of them and that her parental rights to those children had been terminated voluntarily and in some cases involuntarily.

Ms. Walsh has filed an appeal, but neither Farrell nor any Unknown Father have appealed the Trial court's Judgment.

The issues presented for review are:

- A. Whether the Juvenile Court properly concluded that Ms. Walsh failed to substantially comply with the reasonable obligations of her permanency plans?
- B. Whether the Juvenile Court properly concluded that Ms. Walsh failed to remedy the persistent conditions in her life that prevented the child's return to her custody?
- C. Whether the Juvenile Court properly concluded that Ms. Walsh abandoned J.W.W. by failing to provide a suitable home within the relative four-month period?

This Court reviews the decisions of a trial court sitting without a jury *de novo* upon the record. *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002). The trial court's conclusions of law are reviewed under a purely *de novo* standard with no presumption of correctness. *Taylor v. Fezell*, 158 S.W.3d 352, 357 (Tenn. 2005). We review credibility determinations made by the trial court with great deference. *Keaton v. Hancock County Bd. of Educ.*, 119 S.W.3d 218, 223 (Tenn. Ct. App. 2003).

Tennessee Code Annotated Section 36-1-113 governs the termination of parental

rights and provides that the termination of parental rights must be based upon a finding by the court by clear and convincing evidence that the grounds for termination of parental or guardianship rights have been established and that termination of the parent's rights is in the best interests of the child. Tenn. Code Ann. § 36-1-113(c) (2005).

Accordingly, to sever the parent-child relationship, a court must insure that clear and convincing evidence supports such a drastic measure. *In re Valentine*. The standard of clear and convincing evidence has been defined as “evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence.” *Id.* Thus, while this Court reviews individual factual findings under the preponderance standard, we consider the combined weight of those established facts to determine whether they clearly and convincingly support the elements required for terminating parental rights. *In re B. P. C.*, No. M2006-02084-COA-R3-PT, 2007 WL 1159199, at * 5 (Tenn. Ct. App. Apr. 18, 2007)(citing *In re Tiffany B.*, No. M2006-01569-COA-R3-PT, 2007 WL 595369, at *6 (Tenn. Ct. App. Feb. 26, 2007); *In re Giorgianna H.*, 205 S.W.3d 508, 516 (Tenn. Ct. App.2006); *Kleshinski v. Kleshinski*, No. M2004-00986-COA-R3-CV, 2005 WL 1046796, at *17 (Tenn. Ct. App. May 4, 2005)).

Ms. Walsh has not appealed the Court’s finding that termination of the her parental rights was in the best interest of the child. Hence that prong of the determination to terminate the parents’ rights will not be addressed. *Melton v. Melton*, No. M2001-00128-COA-R3-CV, 2004 WL 63437 at *3 (Tenn. Ct. App. Feb 22, 2004).

Any one of the nine statutory grounds for termination of parental rights listed in Tenn. Code Ann. § 36-1-113(g) is sufficient to support an order terminating parental rights where termination is in the best interests of the child. *In Re Audrey S. and Victoria L* 182 S. W. 3d 838, 865 (Tenn. Ct. App. 2005). In this case the Court found by clear and convincing evidence that Ms. Walsh had failed to substantially comply with the permanency plan pursuant to Tenn. Code Ann. § 36-1-113(g)(2) and § 37-2-403(a)(2) . The Court specifically found that the January 2, 2008 plan required Ms. Walsh to refrain from criminal activity and to remain in good standing on probation and that she had failed to do so in that she had continued to be involved in criminal activity, resulting in a violation of probation and her subsequent incarceration.

Appellant asserts that this finding was error because she did “substantially” comply with the permanency plans because she completed a mental health evaluation, completed an alcohol and drug assessment, obtained housing, obtained employment and cooperated with DCS to locate J.W.W.’s father. However, the record does not support a finding that Ms. Walsh “substantially” complied with the other requirements of the permanency plan. Terminating parental rights based on Tenn. Code Ann. § 36-1-113(g)(2) requires more proof than that a parent has not complied with every minute detail of the permanency plan. To succeed under Tenn. Code Ann. § 36-1-113(g)(2), DCS must demonstrate first that the requirements of the permanency plan are reasonable and related to remedying the conditions that caused the child to be removed from the parent's custody in the first place. *In re Valentine*; *In re L.J.C.*, 124 S.W.3d 609, 621 (Tenn. Ct. App. 2003). When the trial court does not make such a finding, this Court will review the issue *de novo*. Further, it must be

shown that the parent's noncompliance is substantial in light of the degree of noncompliance and the importance of the particular requirement that has not been met. *In re Valentine*.

The initial permanency plan, dated April 27, 2007, provided that Ms. Walsh was to maintain safe and stable housing and provide DCS with documentation of housing. Further, she was to provide sufficient income for her family and provide proof of her income to DCS. She was directed to pay monthly child support, and to participate in a psychological assessment and to follow all recommendations resulting from that assessment. She was to participate in an alcohol and drug assessment and follow all recommendations resulting from those assessments. Also, she was to resolve all outstanding criminal charges and keep DCS informed of the status of these charges. Finally, she was to cooperate with DCS regarding identification of the father of J.W.W., and this plan was approved by the Court on May 21, 2007.

A revised permanency plan dated May 1, 2008 provided the same requirements with the exception of the requirement regarding identification of the father. The second plan also provided for Ms. Walsh to have supervised visits with J.W.W. The second plan indicates that Ms. Walsh had a psychological assessment on December 3, 2007 and she was recommended to have individual therapy and case management services to assist her with her symptoms of bipolar disorder and that she would benefit from a psychiatric consultation. She was recommended to undergo alcohol and drug treatment and random urine drug screens. The plan states that she needed to follow this recommendation, and she apparently requested another psychological evaluation and she was directed to follow the recommendations from that assessment as well.

This plan was approved by the Court on July 28, 2008, and the plan states that Ms. Walsh did not participate in the creation of the plan and she refused to sign it. This permanency plan states that the goal of the plan had changed from reunification to adoption and further states that Ms. Walsh has not completed the tasks of her permanency plan and that she was incarcerated at the time the plan was revised.

The permanency plan requirements were reasonable. Ms. Walsh had a long history of homelessness, untreated mental illness, unemployment and criminal activity, including incarceration. Given these circumstances, the requirements of the permanency plan that Ms. Walsh establish a stable home, obtain an income, pay monthly child support and participate in psychological and substance abuse assessments and follow all recommendations resulting from the assessments were reasonable. Moreover, the requirement that Ms. Walsh resolve her criminal issues goes hand in hand with the requirements that she establish a stable home and obtain employment as incarceration would preclude her from achieving these goals.

The record clearly shows Ms. Walsh did not substantially comply with the major requirements of the permanency plan. The Trial Court focused on Ms. Walsh's ongoing criminal issues when it found that she had not substantially complied with the permanency plan. The record supports this conclusion as Ms. Walsh was involved in criminal activity, violated her probation and was incarcerated after she agreed to the permanency plan's requirements. Neither did Ms. Walsh

comply with the plan's requirement that she obtain an income and document the income to DCS. Her employment history following the implementation of the plan is brief and sketchy at best. She reported that she worked for a very short time with her father. She also stated that she worked at a hotel for a few months, but she lost the job when she was arrested. She never provided DCS with any documentation regarding these jobs and she failed to notify DCS when she lost her job at the hotel. Ms. Walsh was also required to maintain contact with DCS, which she repeatedly failed to do. The revised permanency plan provided for weekly therapeutic visits between Ms. Walsh and her child. However, Ms. Walsh attended just over half of the scheduled visits between January 2008 and her incarceration in June 2008 and she frequently failed to notify DCS if she was going to miss a visit.

The Trial Court did not err when it found that there was clear and convincing evidence that Ms. Walsh was not in substantial compliance with the permanency plan which established grounds for termination of her parental rights.

Once the Court finds that clear and convincing evidence proves the existence of one statutory ground, the inquiry then shifts to the child's best interest as set forth in Tenn. Code Ann. § 36-1-113(I). If the Court concludes that termination is in the child's best interest, then the entry of a termination order is appropriate. Any one of the nine statutory grounds for termination of parental rights listed in Tenn. Code Ann. § 36-1-113(g) is sufficient to support an order terminating parental rights where termination is in the best interest of the child. *In re Audrey S. and Victoria L.* 182 S.W.3d 838, 865 (Tenn. Ct. App. 2005)(citing *In re D.L.B.*, 118 S.W.3d 360, 367 (Tenn. 2003); *In re C.W.*, 37 S.W.3d 467, 473 (Tenn. Ct. App. 2000)).

Accordingly, we pretermitt discussion of the remaining grounds, which the Trial Court found were also a basis for termination.

The Judgment of the Trial Court is affirmed and the cause remanded, with the cost of the appeal assessed to Katie Ann Walsh.

HERSCHEL PICKENS FRANKS, P.J.